

Original Transcript

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FLAVIA BENITEZ,

Plaintiff,

Vs.

CIVIL ACTION NO
04-11959-NG

SODEXHO MARRIOTT SERVICES,

Defendant.

DEPOSITION OF

FLAVIA BENITEZ

June 29, 2006
10:17 a.m.

John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, Massachusetts 02210

Susan A. Romano, Notary Public, Register Merit Reporter and Certified Realtime Reporter
within and for the Commonwealth of Massachusetts



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1 A. No. You know I don't.

2 Q. Okay. Who is your last employer?

3 A. You. Sodexho Marriott.

4 Q. And when was the last time that you
5 were employed?

6 A. What do you mean the last time I
7 was employed?

8 Q. Was that in January --

9 A. The last --

10 Q. -- of 2000?

11 A. No. The last day that I went to
12 work or the day that they wrongfully
13 terminated me? What day you want?

14 Q. What was the last day you went to
15 work?

16 A. January 25 -- 2-5, 2000.

17 Q. 2000, okay. And when did you start
18 working for Sodexho?

19 A. In -- Let me get -- I wrote it
20 because I don't think I'm going to
21 remember all this stuff. I think it was
22 8/18/97. Let me get this because I got
23 -- 8/18/97. Yeah. 8/18/97.

24 Q. You believe it's August 18, 1997?



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1 A. Yes.

2 Q. Okay. And what -- What position
3 were you hired in when you started in
4 August 18th, 1997?

5 A. Okay. Let me get this.

6 (Pause.)

7 A. Okay. This is what I was hired
8 for. Flavia Benitez, cashier.

9 Q. Cashier?

10 A. This is what I was hired for.
11 This was my regular duties that was
12 supposed to do (indicating). Those were
13 it.

14 Q. Okay. I'll ask you the questions
15 and we can go through.

16 A. Um-hum.

17 Q. When you -- Were you a cashier
18 throughout your tenure at Sodexho?

19 A. What?

20 Q. Were you a cashier from the time
21 you started at Sodexho until the time your
22 employment terminated or you last worked
23 there?

24 A. I was a cashier but in different --



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1 they move me from one store to another
2 department. They may me do every
3 different work. Depend what they need if
4 I wanted. Sometime I don't want it and
5 they made me do it. This is why we
6 disagreed so many times too because I
7 can't do it. I give doctor notice that I
8 can't and they turn me out for a later
9 time and then come back. But this was my
10 real job --

11 Q. Position?

12 A. -- duties.

13 Q. At any point in time, to your
14 knowledge, did your formal title of
15 cashier change?

16 A. No.

17 Q. Okay. Who was your supervisor when
18 you started in 1997?

19 (Pause.)

20 A. Because -- what supervisor? We got
21 two. Bran Marasa; we got Mary Ravanell. I
22 don't know how to pronounce this.

23 Q. Could you spell them if you would?

24 A. Sure. I can show you if it is



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1 better because I'm not too good in
2 spelling.

3 Q. No, that's fine. I'll note for the
4 record that you're referring to some
5 documents in response to some of these
6 questions. Ralph Marasa, M-A-R-A-S-A, it
7 looks like and Mary Ravenell,
8 R-A-V-E-N-E-L-L. At any point in time --
9 how long were those individuals your
10 supervisors?

11 A. Until they merged with Marriott.

12 Q. Okay.

13 A. They merge with Marriott.

14 Q. Okay. Do you recall when that
15 happened?

16 A. Hmm?

17 Q. Do you recall when that happened?

18 A. Was in -- I got it right here.
19 Don't worry. I got my first check with
20 the -- all company. I think it was in
21 '98. Let me be sure. Okay. Maybe right
22 here.

23 (Pause.)

24 A. Okay. Right here. In '98.



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1 Q. In 1998?

2 A. Yeah. 04/15/98. This is one of
3 the first check that say the two great
4 companies have just come together...

5 Q. Okay. Prior to that time, from
6 August '97 until the merger occurred in
7 1998, what location were you working at?

8 A. The same cafe.

9 Q. Where was that cafe?

10 A. 100 Federal -- Let me --

11 Q. 100 Federal Street?

12 A. Um-hum.

13 Q. I'm sorry. Ms. Benitez, you've got
14 to respond verbally so that she can take
15 down your answer.

16 A. Okay. 100 Federal Street because
17 -- Boston. Because there is so many time
18 they -- long time that something I can
19 remember.

20 Q. Sure. No, I understand. It was a
21 while ago. During the entire time you
22 worked for Sodexho from 1997 through 2000
23 did you work at that same location at 100
24 Federal Street?



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1 A. Yes. Yes. Just different --
2 because they have smaller store back the
3 floor and different floor and they move,
4 the cashier.

5 Q. Okay.

6 A. They know how to do their job, they
7 move. Just when I can, I can.

8 Q. If I understand you correctly, were
9 there different locations at 100 Federal
10 Street where Sodexho provided services?

11 A. I don't understand what you mean.

12 Q. Were there different locations at
13 100 Federal Street in terms of the
14 different floors where Sodexho people would
15 work?

16 A. No. Because they got cafe in
17 different floor.

18 Q. Okay.

19 A. Different floor. First floor,
20 second floor -- different floor. The
21 floor that I never went because --

22 Q. What floor did you work on?

23 A. The basement.

24 Q. Basement. Okay. And when the



1 or vision problems as being a disability
2 that you had?

3 A. Huh?

4 Q. I'm asking, you just referenced
5 asthma, the flu, pain all over your body
6 and vision problems. I'm just wondering in
7 your complaint that you filed --

8 A. Um-hum.

9 Q. -- where you refer to a back
10 injury --

11 A. Yeah.

12 Q. -- is there any reference in there
13 to asthma, the flu, pain all over your
14 body or vision problems?

15 A. No. It's because I told you. If
16 I knew all this stuff going to be more
17 specific because I didn't know all they
18 apply. Even though when I file the mass
19 complaint I wasn't -- I hadn't got all the
20 knowledge that all the lawyers apply and
21 all the -- what I really got it. You know
22 why I put back injury? Because on January
23 22, 2000, since I got -- gonna got a big
24 back surgery. They thought it was like a



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1 hernia; they're going to get it. This is
2 why they fire me too. Was like a lipoma
3 that was pressing the nerve on my spine.
4 This was -- it was almost an alias and
5 this is -- for the purpose was the same
6 because pressing my nerve and produce me a
7 pain, a pain. And they do like an MRI to
8 check out my spine to see if there was a
9 hernia, the same. Because they say this
10 shouldn't got so many pain. The thing
11 that was supposed to be the sore didn't
12 got -- and they send me to do an MRIs and
13 they discovered I have two hernias -- two
14 discs in my spine. Besides that I was
15 supposed to get another surgery with this
16 (indicating). After that one, the other
17 surgery I was supposed to get another one,
18 another one or two more. And in the
19 disabilities --

20 Q. Ms. Benitez, let me ask you a
21 question.

22 A. No. No. You asked about the
23 disability. Let me tell you about the
24 disability. Disability to say you got to



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1 Q. Okay. And that's the meeting that
2 occurred between yourself and Mr. Freehoff,
3 you mentioned Paul and Michael, correct?

4 A. Yeah. All of them. Paul, Michael
5 and Eric was there.

6 Q. And during that meeting you told
7 them that you might need to go out for
8 back surgery?

9 A. Yes. Yes, I did.

10 Q. Okay. And did you say anything
11 else in regard to the back surgery at that
12 time?

13 A. Not that I remember.

14 Q. Can you even recall what they said
15 to you at that time in regard to your
16 reference to back surgery?

17 A. What do you mean?

18 Q. What did they say to you in regard
19 to back surgery?

20 A. Oh, bring the doctor note and going
21 to be fine.

22 Q. Who said that? Do you recall which
23 of the three individuals said that?

24 A. I don't know. I think it was



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1 to the transportation I went back. I
2 remember the letter. Michael said the
3 letter. And I went back and asked for it
4 and say, okay, we're going to mail it to
5 you.

6 Q. Okay. Did they mail it to you?

7 A. Yes, they do.

8 Q. At any point in time did you ever
9 provide that to anyone at Sodexho?

10 A. Huh?

11 Q. At any point in time did you ever
12 provide that letter to anybody at Sodexho?

13 A. Yes. This is when I went to
14 Michael to say this is the letter. I
15 need that time. This is when he told me,
16 no, you have to change because somebody
17 going to be on vacation at that time.

18 Q. Do you recall when that occurred?

19 A. Hmm?

20 Q. Do you recall when that
21 conversation with Michael occurred, what
22 date?

23 A. I think it was in the morning
24 because I was supposed to be in the



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1 cashier at that morning because my lunch
2 was supposed to be 11. So --

3 Q. Do you know what day of the week
4 it was?

5 A. It was the same week that I
6 received the letter.

7 Q. Do you recall what the date of that
8 conversation was?

9 A. I think it was a Thursday or
10 Friday.

11 Q. Do you recall the date in January
12 that that would have been?

13 A. The date, what do you mean the
14 date?

15 Q. The date.

16 A. Twelfth -- the something -- the
17 number.

18 Q. Yes.

19 A. No. It was before -- the same
20 week that I went. I went on the 4th. I
21 received the letter on the 5. Could be
22 on the 6 or the 7.

23 Q. Okay. You don't recall
24 specifically what date?



1 A. It was the same week, the same week
2 that I went to the doctor appointment.

3 Q. Okay. And --

4 A. So I had to get it because they
5 had to get it because supposed to be on
6 the 27. So --

7 Q. And during that conversation did
8 you have any other discussion with -- I
9 believe, you said Mr. Potvan regarding --

10 A. No. He got like a big calendar
11 with days, big numbers and something like
12 that. And say oh, no, you have to
13 reschedule because someone going to be on
14 vacation, but not even was the cashier. I
15 say what cashier? We got like six, seven
16 cashier. Why? He said, another cashier
17 gonna be on vacation. It's on the table,
18 it's not fair. But you understand when
19 those -- the cashier -- wasn't even a
20 cashier that was on vacation.

21 Q. Was the back surgery the only issue
22 or disability that you discussed with
23 anyone from Sodexho?

24 A. Hmm?



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1 A. Yes. When the -- my primary doctor
2 had to referred me.

3 Q. Okay. Do you have an understanding
4 what a lipoma is?

5 A. A ball.

6 Q. Okay. Is it like a mole type of
7 -- does it look like a mole?

8 A. What do you mean, "mole"?

9 Q. It's a -- it was something that was
10 growing on your skin that was --

11 A. No. It wasn't growing on my skin.
12 It was growing in the -- in my spine.

13 Q. Okay.

14 A. Between the nerve -- the nerve --
15 it have a little hole in the nerve.

16 Q. Nerve.

17 A. The spine, the middle of the spine.
18 It was right there in my spine. It was
19 an operation the nerve. This is where I
20 got the pain. Besides they -- any of
21 that they discovered through the process
22 of -- they discover the hernia too.

23 Q. Okay. And then I'll show you
24 another document which we'll mark as



1 right here?

2 A. Um-hum.

3 Q. It says, "we will make arrangements
4 to remove the lipoma and the skin tag in
5 the procedure room under local anesthesia
6 on January 27, 2000." Do you see that?

7 A. Um-hum. Yes.

8 Q. You've got to answer verbally. Do
9 you see that reference?

10 A. Now? I see it now.

11 Q. Yes. Okay.

12 A. I'm seeing now.

13 Q. Understood?

14 A. Not before.

15 Q. Is that your understanding of what
16 occurred on January 27th? You had a
17 lipoma and a skip tag removed on that
18 date?

19 A. Was a lipoma that was pressing my
20 nerve in my spine.

21 Q. Okay.

22 A. It was in my spine. This is what
23 the difference because it was in the skin.
24 It would be different. I don't see what



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1 a -- pain besides the hernia that they
2 discovered to in the process. But the
3 problem that the lipoma it was in the
4 nerve. Let me see if I got a pen to
5 describe you --

6 Q. Is it --

7 A. -- how it is.

8 Q. Let me ask you: Is it your
9 understanding that the lipoma was in your
10 spine?

11 A. Um-hum.

12 Q. Is it your understanding the lipoma
13 was in your spine?

14 A. Yeah. In the middle right there
15 (indicating).

16 Q. No, no. That's fine, Ms. Benitez.
17 We're all set. Let me show you another
18 document, Ms. Benitez.

19 A. Right there (indicating). You see?

20 Q. Okay.

21 A. In the spine. Was right there.

22 Q. Okay. And did you actually go to
23 the hospital on January 27th of 2000?

24 A. Yes. I had to go because I had to



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1 got the pain away from me.

2 Q. At any point in time did you ever
3 request that your surgery be changed to a
4 different date after speaking with the
5 people at Sodexho regarding that time off?

6 A. No, because I had to get another
7 appointment with the Carlo Fernandez and
8 reschedule and everything and going to be
9 a lot of stuff. And I want to get out as
10 soon as possible my pain. And I know the
11 Sodexho Marriott didn't need me for
12 really. Just a meanly process. They
13 don't want to concede me just for that. If
14 I knew they only was two or three cashier,
15 only one cashier, I would understand. But
16 no, it's no excuse. This is no excuse
17 not to concede me that -- that's no excuse
18 to concede me -- to not concede me the
19 time off for my surgery.

20 Q. Do you recall what time you went to
21 the hospital on January 27th?

22 A. Early in the morning. It was
23 supposed to be earlier.

24 Q. What time -- Do you recall what



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1 on January 27th of 2000, ever tell you
2 that there were any complications
3 associated with that surgery?

4 A. Just that he was the doctor that
5 did the operation.

6 Q. So no one ever told you that there
7 was complications in regard to the surgery
8 or that you'd have to have other
9 procedures done in regard to the lipoma
10 that was removed from your back?

11 A. No. For the hernia, yes. For the
12 hernia, yes. For the hernia to this the
13 -- they discover on January 22, 2000
14 before I was fired, yes. They were
15 supposed to get another procedure but I
16 couldn't get it because Sodexho Marriott
17 terminated me, got no medical insurance.
18 Had nothing. So I got my two hernia in
19 my spine.

20 Q. Okay.

21 MR. MARTIN: We'll mark that
22 as the next one.

23 BY MR. MARTIN:

24 Q. After you had the lipoma surgery



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1 and -- you were fully capable of going
2 back to work?

3 A. No. Because continue the pain and
4 after that I continue -- began to getting
5 depression.

6 Q. I'm asking physically.

7 A. Sad.

8 Q. After you had the surgery for the
9 lipoma?

10 A. Um-hum.

11 Q. There was a time period when the
12 doctor said that you should stay out of
13 work to recover; is that right?

14 A. Yes. He gave me a notice to go
15 back to work. I went back to work and
16 they didn't sent me.

17 Q. Okay. Is it your understanding
18 that after your surgery for lipoma you
19 were fully capable of returning to work?

20 A. Yeah. He gave me a notice when to
21 got to go to work.

22 Q. Okay.

23 A. Let me get it.

24 Q. We'll mark that's the next one.



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1 A. I was supposed to get it to get
2 back to the 14 days.

3 (Exhibit-7, Medical
4 Provider's Statement, marked for
5 identification.)

6 A. Yeah, this is --

7 Q. I'm show you this document marked
8 as Exhibit Number 7, Ms. Benitez?

9 A. No. This is the doctor said told
10 me to go to back to work.

11 Q. Ms. Benitez -- Ms. Benitez, I've
12 got to ask you some questions, okay?

13 A. You asked me that question and I
14 didn't respond.

15 Q. I'm at -- My request to you is I'm
16 asking you to look at Exhibit Number 7 if
17 you would.

18 A. Oh, it's this one. It's the same.

19 Q. Have you seen that document,
20 Exhibit Number 7 before today?

21 A. Yeah. I'm showing you. This
22 is --

23 Q. Is that the doc -- is that Exhibit
24 Number 7, the note that you received from



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1 the doctor regarding when you could go
2 back to work?

3 A. No. This is -- he gave me in hand
4 this one. This is when I went to -- to
5 -- after the surgery I got to had to get
6 an appointment back again and this is when
7 he gave me this. When I was supposed to
8 go to back to work and when I was out he
9 said from January 27, 2000 through
10 February 14, 2000. I was suppose to work
11 -- go to work on February the 15, 2000.

12 Q. Okay.

13 A. So after I did that they upset me
14 so I got no job.

15 Q. If you look at Exhibit Number 6
16 there's a signature of the doctor and
17 there's also a reference of February 8th,
18 2000. That's when you went back and saw
19 the doctor and received this note?

20 A. Yeah. I think so. Yeah, I got it
21 right here (indicating).

22 Q. And is it your understanding that
23 as of February 15 of 2000 that you were
24 fully capable of returning to work?



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1 A. Yes. It says right here
2 (indicating).

3 Q. Okay.

4 A. Because I was unable to -- say,
5 "the patient continue totally unable to
6 perform her regular job duties since
7 January 27, 2000 to February 14, 2000."
8 So on the 15 I was supposed to go to work
9 because I was out until the 14th.

10 Q. Okay. So as of the 15th you were
11 capable of working --

12 A. Yes.

13 Q. -- and performing your job?

14 A. Yes.

15 Q. Okay. And is it your understanding
16 that after February 14th of 2000 that your
17 lipoma issue that you had surgery on had
18 been resolved?

19 A. Yeah. It was suppose to go to on
20 the 15th.

21 Q. Okay.

22 A. This is the time off that he gave
23 me.

24 Q. And after you had -- in regard to



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1 the lipoma surgery that you had, after you
2 had the surgery, the lipoma didn't affect
3 your ability to walk, did it?

4 A. Not really, but I just -- I had to
5 walk slowly because I got -- have
6 breathing problem and I have high blood
7 pressure. So I had to slow -- slowly. I
8 can't walk fast like every -- every --
9 like every people does. But I can walk.

10 Q. Okay. So you have no problem
11 walking?

12 A. You can see me. You don't see me
13 moving me?

14 Q. And after --

15 A. Just slowly.

16 Q. After you had the lipoma surgery
17 did it affect your ability at all to see?

18 A. To what?

19 Q. To see? Did the lipoma affect your
20 ability to see at all?

21 A. No. Because it wasn't related to
22 my vision.

23 Q. Okay.

24 A. I got my vision problem before.



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1 Q. Okay.

2 A. I got glasses so I have to use
3 glasses to read. And even to take
4 medicine I had to take my glasses.

5 Q. Okay.

6 A. If I don't have my glasses I can't
7 take my medicine because I take so many
8 medicines that I don't know which one I
9 have to take at a different time.

10 Q. Okay. And did the lipoma, at any
11 point in time, affect your ability to
12 hear?

13 A. To hear? No.

14 Q. At any point in time did the lipoma
15 affect your ability to speak?

16 A. You see me speaking.

17 Q. I'm just asking at any point in
18 time did the lipoma ever affect your
19 ability to speak?

20 A. I'm not speaking?

21 Q. I understand that you're speaking.
22 I'm just asking: At any point in time
23 did the lipoma affect your ability to
24 speak?



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1 A. You're trying to say that I'm now
2 disabled?

3 Q. I'm trying to ask if the lipoma
4 ever affected your ability to speak?

5 A. No. No, it doesn't. Directly it
6 doesn't.

7 Q. At any point in time did the lipoma
8 ever affect your ability to breathe?

9 A. No. Because I got breathing
10 problem before. I got breathing problem.

11 Q. Okay. And at any point in time
12 did the lipoma ever affect your ability to
13 learn?

14 A. Just the pain. Just the lipoma
15 gave me the pain, just the pain. The
16 pain that's sometime I can't -- I couldn't
17 work -- or walk. Now I can walk fast
18 too. But even fast. For the hernia,
19 yes. Do you give me the -- the trouble
20 to -- sometime when I bend right here and
21 I had to do it like this (demonstrating)
22 because it depend.

23 Q. I'm asking you right now about
24 lipoma. Okay?



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1 A. Um-hum.

2 Q. And we'll talk about the other
3 issues afterwards. Did the lipoma ever
4 affect your ability to learn that you knew
5 of?

6 A. You don't think that the lipoma
7 going to work -- because this is in the
8 back. This is not in the head.

9 Q. Okay. So --

10 A. This is in the head, this
11 disability. I was disabled when they
12 fired me because the doctor give me a note
13 that was unable to do my job.

14 Q. Okay.

15 A. I was disability at that time.

16 Q. And after you had the surgery you
17 had no pain in regard to the lipoma,
18 correct?

19 A. I got a pain because I got to do
20 it again. This is why you don't know.
21 That I had to do it it again. The same
22 back surgery I had to do it it again.

23 Q. When did you have to do that again?

24 A. On December 2005.



1 requested those records and to my
2 knowledge they haven't been produced. Let's
3 go back for a second. After we were
4 talking about the lipoma that you had
5 surgery on in January of 2000, did that
6 affect your ability to care for yourself?

7 A. Not the lipoma but the hernia, yes.

8 Q. Okay.

9 A. The hernia it was the same and also
10 -- also the lipoma too because I got a
11 pain. Nobody with pain can do anything.

12 Q. So --

13 A. You had to take painkillers to do
14 whatever you had to do. Sometime I went
15 to work and the people say to me why you
16 come to work? Because you can see in my
17 face there was something. You got to stay
18 home. No, I can't because I have so many
19 days sick.

20 Q. Okay. After you had the surgery on
21 January 27th of 2000 did the pain in --
22 with regard to the lipoma go away for a
23 long period of time?

24 A. Went away for a while and then come



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1 something growing. I knew because you can
2 feel your body. You know your body. You
3 can feel it.

4 Q. Okay. After you had the lipoma
5 surgery in January 27th of 2000 --

6 A. Um-hum.

7 Q. -- were you able to feed yourself?

8 A. To what?

9 Q. Feed yourself?

10 A. Yeah. I eat sandwiches.

11 Q. Were you able to care for yourself,
12 meaning bathe yourself, dress yourself,
13 groom yourself after you had the surgery?

14 A. Not dress myself.

15 Q. You couldn't dress yourself?

16 A. No.

17 Q. For how long a period of time could
18 you not dress yourself?

19 A. It was a long time. I can't even
20 -- you know why I use shoes like this? I
21 don't wear sneakers because I can't tie my
22 -- I can't. Can't tie my sneaker. Bend
23 to that position to tie my sneaker have to
24 you use open shoes in order to put my



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